

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 33251 of 2004(H)

I.A.950/2000 IN OS.71/1997 of SUB COURT, OTTAPPALAM

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PETITIONER:

SURESH, S/O.LATE RAMADASAN VAIDHYAR,
NADUKALATHIL HOUSE, ELAMPULASSERY AMSOM,
POMPRA DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENT:

JANAKI, D/O.GOPALAN VAIDYAR,
RESIDING AT RENJITH BHAVAN,
MUTHUKKAD, NILAMBUR TALUK, MALAPPURAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.33251/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN I.A.950/2000 IN O.S.71/97 OF SUB COURT,
OTTAPPALAM DT.23.7.04

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.33251 OF 2004

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DATED THIS THE 26TH JUNE, 2007

J U D G M E N T

One of the supplemental plaintiffs in a suit for recovery of possession on the strength of title is the petitioner in this Writ Petition under Article 227 of the Constitution. His grievance is that the request of the plaintiffs that the suit be stayed and the question of tenancy arising in the suit be referred to the Land Tribunal under Section 125 (3) of the Kerala Land Reforms Act for decision was declined by the trial court. The original plaintiff and the defendant (respondent herein) are both the children of one Gopalan Vaidyar. The case of the supplemental plaintiffs is that they are having absolute title over the property by virtue of a kanom assignment deed executed by the jenmi in the year 1962 in favour of the original plaintiff and that since 1962 they are in absolute ownership and enjoyment of the property. But the case of the respondent-defendant is that the property was outstanding on verumpattom lease from the jenmi family with the family of the original plaintiff and the defendant and that by virtue of a partition which was effected in that family in the year 1972, the

scheduled property was allotted towards the exclusive share of the defendant. Claiming that the property is under her exclusive possession, she filed a suit for injunction before the Munsiff's Court which is now transferred over to the Sub Court and registered with the Sub Court as O.S.No.161 of 1998 and is being tried jointly along with the present suit. The case of the original plaintiff was that on the strength of a temporary injunction which was obtained by the respondent in her suit from the Munsiff's Court, Ottappalam, she trespassed into the schedule property and that he should be allowed to recover possession of the property on the strength of the title claimed under the kanom assignment deed of 1962.

2. The contentions raised by the respondent in the suit is that the suit property had been under the possession of Sri.Gopalan Vaidyar, the common predecessor of herself and the original plaintiff and his predecessors and that in the partition deed which was executed in the family in 1972, the scheduled property was allowed towards her share. On an interlocutory application filed by the supplemental plaintiff, the court formulated the following additional issue in the suit:-

“Whether the suit is not liable to be stayed and the

question of tenancy referred to the Land Tribunal for a finding under Section 125(3) of the K.L.R. Act.”

However, after hearing the parties on that additional issue, the court below has entered Ext.P1 finding holding that in the suit the issue of tenancy does not arise. According to the court below, the case of the original plaintiff was that he was having title since 1962. He had another case that the property which is allotted to the defendant under the partition deed of 1972 is a different property and that the same will be revealed on a measurement of the property on the basis of survey number and boundaries. Since the title claimed by the plaintiff is denied in the suit filed by the defendant, as far as this suit is concerned, it is for the plaintiff to establish that he is having title and once he succeeds in that, he will become eligible for a positive decree. The court noticed that the suit filed by the defendant was a suit simpliciter for injunction and that as far as suits simpliciter for injunction are concerned, the relevant issue can only be the issue of possession. The court has referred to Section 125(3) of the Kerala Land Reforms Act and relied on the decision of this Court in **Raveendran v. Sarada Amma** (1987 (2) KLT Sh.Notes Case No.31, p.23).

3. Even though service is complete on the respondent, she has not chosen to enter appearance before this Court for resisting the prayers in the Writ Petition.

4. On hearing the initial submissions of Mr.Santheep Ankarath, counsel for the petitioner, I directed him to make available the copy of the plaint in the suit filed by the respondent and copy of the written statement in the present suit as well as copy of the partition deed relied on by the respondent. Accordingly those documents were produced. Mr.Santheep Ankarath would strongly assail the finding of the court below that the question of tenancy does not arise. According to him, the case of the defendant is that while Mr.Gopalan Vaidyar, father of the parties was in enjoyment of the property as verumpattomdar on the basis of the lease from the jenmi family, partition took place in the year 1972 and the property was allotted towards her share. But the case of the plaintiff is that even prior to that, in 1962, on the basis of a direct assignment deed from the jenmi, the plaintiff came to have absolute ownership and therefore nobody else was having possession over the property after 1962. Since the respondent does not claim exclusive possession other than on the strength of the partition deed of 1972 and since the tenure of

the property even at the time of the partition is 'lease', the question whether parties to the partition deed were having possession over the properties at the time of the partition deed is a relevant question, so submitted Mr.Santheep.

5. I have considered the submissions of Mr.Santheep Ankarath in the light of Ext.P1 and the documents which he placed before me for perusal. On reading through Ext.P1, it will not be possible to say that the same is not a reasoned one and that the findings therein are wholly unreasonable as to be interfered with in the supervisory jurisdiction of this Court under Article 227. But, at the same time, on considering the rival pleadings in the present suit and the respondent's pleadings in her suit, it will have to be noticed that the question whether the respondent's predecessors were having possession after 1962 or on the date of the partition deed or at least as on 1.1.1970 when cultivating tenants were conferred with statutory fixity does arise in the suit. Significantly, the possession which the respondent claims over the property is possession in continuance of an ancient lease which has continued even after 1962 and even on the date of the partition deed on the strength of which injunction is sought for by her in her suit. She has no claim of possession other than as a cultivating tenant. At

the same time, since questions regarding identity of the property is also involved in the suit, I am of the opinion that the additional issue already raised by the court below does not have to be referred to the Land Tribunal for decision.

I approve Ext.P1 to the extent it denies reference of the additional issue to the Land Tribunal. But I modify the finding in Ext.P1 that the issue does not arise and direct the court below to try the additional issue along with the other issues in the suit. The Writ Petition is disposed of modifying Ext.P1 to the extent indicated hereinabove.

(PIUS C.KURIAKOSE, JUDGE)

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